

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CRIMINAL DOCKET NO.: 3:01CR36**

UNITED STATES OF AMERICA)	
)	
vs.)	
)	ORDER
IAN ANDRE PERSAUD (7),)	
)	
Defendant.)	
<hr/>)	

THIS MATTER is before the Court on Defendant's Application/Motion for Writ of Audita Querela, filed October 7, 2005.

On September 21, 2002, a jury found Defendant guilty of conspiracy to possess with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. §§ 841, 846. On January 13, 2003, Defendant was sentenced to life imprisonment, at which time Defendant filed a Notice of Appeal. Judgment was entered on January 15, 2003. On March 8, 2004, the United States Court of Appeals for the Fourth Circuit affirmed the judgment in this case. On May 5, 2005, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. This Court has not yet ruled on Defendant's Section 2255 motion.

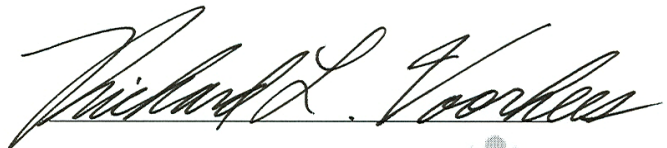
Defendant now files the instant Motion, asking the Court to vacate the sentence imposed, as such sentence violates his Sixth Amendment right to a jury trial. Since Defendant's allegations are redressable pursuant to a Section 2255 motion, and in light of the fact that Defendant already has a Section 2255 Motion pending before this Court, Defendant's Application/Motion for Writ of Audita Querela is not properly before this Court. *See United States v. George*, 153 F.3d 723 (4th Cir. 1998) (noting that "[a] writ of audita querela is available

where there is a legal objection to a conviction that cannot be addressed in another form of post conviction remedy”) (citing *United States v. Holder*, 936 F.2d 1, 5 (1st Cir. 1991)).

IT IS, THEREFORE, ORDERED that Defendant’s Application/Motion for Writ of Audita Querela is hereby **DENIED AS MOOT**.

The Clerk is directed to send copies of this Order to Defendant, defense counsel, and the attorney for the United States.

Signed: February 1, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
Chief United States District Judge

